

APPEAL NO. 151430
FILED SEPTEMBER 15, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 22, 2015, and continued on June 24, 2015, with the record closing on June 24, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to left knee complex tearing of the body and posterior horn of the lateral meniscus, high grade chondromalacia, moderate to severe post-traumatic osteoarthritis, chronic complete ACL tear, and degeneration of the PCL; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 14, 2014; and (3) the claimant's impairment rating (IR) is four percent.

The claimant appealed the hearing officer's extent of injury, MMI and IR determinations based on sufficiency of the evidence. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury on (date of injury).

The claimant did not attend the April 22, 2015, CCH. The hearing officer sent the claimant a 10-day letter and the claimant responded to the 10-day letter requesting a new hearing; however, the claimant did not attend the subsequent CCH held on June 24, 2015. The hearing officer closed the record on June 24, 2015.

STIPULATION CORRECTIONS

We note that the record reflects that the hearing officer's decision contains an error and omission to the stipulations made by the carrier at the CCH on April 22, 2015.

The hearing officer's Finding of Fact No. 1.E. incorrectly identifies a date the designated doctor, (Dr. H), certified that the claimant reached MMI as January 14, 2014, rather than January 17, 2014, as stipulated to by the carrier at the CCH on April 22, 2015, and supported by the evidence.

Also, the hearing officer omitted a stipulation made by the carrier at the CCH on April 22, 2015, that the carrier has accepted as compensable a left knee sprain/strain, right elbow contusion, and lumbar strain.

We reform the hearing officer's decision by correcting Finding of Fact No. 1.E. and by adding Finding of Fact No. 1.G. to reflect the correct stipulations made by the carrier at the April 22, 2015, CCH as follows:

Findings of Fact No. 1.

E. The Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, Dr. H certified that the claimant reached MMI on January 17, 2014, with a four percent IR.

G. The carrier has accepted as compensable a left knee sprain/strain, right elbow contusion, and lumbar strain.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to left knee complex tearing of the body and posterior horn of the lateral meniscus, high grade chondromalacia, moderate to severe post-traumatic osteoarthritis, chronic complete ACL tear, and degeneration of the PCL is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is four percent based on Dr. H's certification is supported by sufficient evidence and is affirmed.

MMI

Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

The hearing officer determined that the claimant reached MMI on January 14, 2014, with a four percent IR based on the certification of Dr. H, the designated doctor. As mentioned above, the carrier stipulated in part that Dr. H certified that the claimant reached MMI on January 17, 2014, with a four percent IR, as discussed above. There is only one certification of MMI and IR from Dr. H in evidence.

Dr. H examined the claimant on May 14, 2014, and in a Report of Medical Evaluation (DWC-69) certified that the claimant reached MMI on January 17, 2014, with four percent IR using the Guides to the Evaluation of Permanent Impairment, fourth

edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). Dr. H explained in his narrative report dated May 14, 2014, that the claimant had reached MMI on January 17, 2014, based on (Dr. R) note of January 17, 2014, that states the claimant has full range of motion and no pain to the lumbar spine, right elbow, and left knee.

The hearing officer determined that the certification of Dr. H was not contrary to the preponderance of the other medical evidence which is supported by the evidence. However, the hearing officer mistakenly referenced an incorrect date of MMI, January 14, 2014, in Finding of Fact No. 6, Conclusion of Law No. 4, and her decision. We note that the hearing officer's discussion correctly references that Dr. H certified the claimant reached MMI on January 17, 2014. Given that the evidence reflects that Dr. H actually certified that the claimant reached MMI on January 17, 2014, with a four percent, we reverse the hearing officer's determination that the claimant reached MMI on January 14, 2014, and render a new decision that the claimant reached MMI on January 17, 2014, to conform to the evidence in the record.

SUMMARY

We reform the hearing officer's decision by correcting Finding of Fact No. 1.E. and by adding Finding of Fact No. 1.G. to the hearing officer's decision.

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to left knee complex tearing of the body and posterior horn of the lateral meniscus, high grade chondromalacia, moderate to severe post-traumatic osteoarthritis, chronic complete ACL tear, and degeneration of the PCL.

We affirm the hearing officer's determination that the claimant's IR is four percent.

We reverse the hearing officer's determination that the claimant reached MMI on January 14, 2014, and we render a new decision that the claimant reached MMI on January 17, 2014.

The true corporate name of the insurance carrier is **STANDARD FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge